

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF PANAYOTOV v. BULGARIA

(Application no. 5883/18)

JUDGMENT

STRASBOURG

21 January 2025

This judgment is final but it may be subject to editorial revision.



In the case of Panayotov v. Bulgaria,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Peeter Roosma, *President*,
Diana Kovatcheva,
Mateja Đurović*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 5883/18) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 25 January 2018 by a Bulgarian national, Mr Panayot Kurtev Panayotov ("the applicant"), who was born in 1978, lives in Varna and was represented by Mr Y. Yankov, a lawyer practising in Varna;

the decision to give notice of the application to the Bulgarian Government ("the Government"), represented by their Agent, Ms Silvina Sobadzhieva, from the Ministry of Justice;

the parties' observations;

Having deliberated in private on 17 December 2024,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The application concerns the right of access to a court in administrative proceedings and, in particular, the application of the procedural rules on time-limits for bringing claims for judicial review against administrative acts.

2. In 2016 the applicant took part in a sealed bid auction for a State-owned property, organised by the administration of the Regional Governor of Varna. On 2 and 3 February 2016 the Regional Governor issued two orders: a main order, by which another bidder was awarded the property, and a subsequent order to correct a technical error. The orders indicated that they were subject to judicial review within fourteen days of the date of their publication and that they would be made public by being displayed on the Varna Regional Administration's notice board and published on its website. The orders were made available on the Varna Regional Administration's website on the day of their issuance. The applicant accessed the orders on the website and on 4 February 2016 lodged an application for judicial review with the Regional Governor, which was referred to the Varna Administrative Court on 9 February 2016. On 9 February 2016 the applicant received a formal notice by post informing him that the orders had been issued and made public. The formal notice also indicated that the orders were subject to judicial review within fourteen days of the date of their publication. It appears that copies of the orders themselves were not enclosed with the formal notice.

3. On 31 October 2016 the Varna Administrative Court, confirming that the claim had been brought in time, set aside the contested orders on procedural grounds. The Regional Governor lodged a cassation appeal, arguing that the applicant's claim for judicial review had been premature because it had been brought before he had received formal notice of the orders. The applicant countered this by asserting that he had applied for judicial review after learning of the orders from the Varna Regional Administration's website, where they had been officially published, and that his claim was therefore admissible.

4. In a final judgment delivered on 14 December 2017, the Supreme Administrative Court ("the SAC") overturned the judgment of the Varna Administrative Court, reinstating the orders. It held that, under Article 149 § 1 of the Code of Administrative Procedure ("the CAP"), the time-limit for bringing a claim had begun to run from 9 February 2016, when the applicant had received formal notice of the orders by post. It therefore dismissed the applicant's claim on the grounds that it had been premature, without examining it on the merits.

5. It appears from the case file that on 28 January 2016 the applicant participated in four public auctions organised by the Varna Regional Administration. On 4 February 2016 he brought four claims for judicial review against the four different orders awarding State properties to other bidders before he had received formal notice of those orders. The panels of the SAC dealing with his other three claims examined them on the merits, taking the view that they had been brought within the time-limit.

6. The applicant complained, relying on Articles 6 § 1 and 13 of the Convention, that he had been denied access to a court to contest the Regional Governor's orders and that the decision of the SAC had been based on an overly formalistic interpretation of the relevant provisions.

RELEVANT DOMESTIC LAW AND PRACTICE

7. Under Article 149 § 1 of the CAP, a claim for judicial review may be brought against an administrative act within fourteen days of the date on which the parties are notified of it. Furthermore, Article 159 § 1 (5) of the CAP provides that the claim will not be examined if it is brought out of time (*просрочено*). The Government submitted examples to the Court of domestic court decisions in which premature claims had been brought before the contested acts had taken effect. None of those examples concerned claims that had been brought before the applicants had received a formal notice. In two other domestic decisions the domestic courts have held, in essence, that it had to be presumed that the applicants were aware of the content of the contested act when they applied for judicial review before the receipt of a formal notice and that the fact that a claim had been brought before such notice had been given was not a reason to decline to examine it as being out

of time (*опр. № 12764 от 22.10.2018 г. по адм. д. № 11160/2018, ВАС*, and *опр. № 2950 от 12.03.2024 г. по адм. д. № 2175/ 2024 г., ВАС*).

8. In addition, Article 239 § 1 (5) of the CAP allows for a final judicial decision to be quashed where, as a result of a breach of the relevant procedural rules, the party was deprived of the opportunity to participate in the proceedings. The Government provided one domestic court decision in which that provision had been applied in relation to the time-limit for bringing a claim for judicial review. In that instance the case had been allowed to be reopened because the SAC, on its own initiative, had found that the claim had been brought after the time-limit had expired and that the applicant was prevented from submitting his arguments on whether the claim had been brought within the time-limit in the course of the ordinary judicial proceedings (*реш. № 4817 от 22.04.2016 г. По адм. Д. № 2002/2016 г., ВАС*).

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION

A. Admissibility

1. Applicability of Article 6 § 1 of the Convention

9. The Government requested the Court to declare the application inadmissible as being incompatible *ratione materiae* with Article 6 § 1 of the Convention, arguing that there was no "civil right" in the case at hand according to the Court's case-law.

10. The Court reiterates, however, that it has already held that participants in public tenders enjoy procedural guarantees under Article 6 § 1 of the Convention on condition that the advantage or privilege, once granted, gives rise to a civil right (see *Marina Aucanada Group S.L. v. Spain*, no. 7567/19, § 33, 8 November 2022, with further references). The Court considers that in the present case the applicant enjoyed a procedural right to the lawful and correct adjudication of his bid (see *Mirovni Inštitut v. Slovenia*, no. 32303/13, §§ 28-29, 13 March 2018).

11. It follows that Article 6 § 1 is applicable.

2. Exhaustion of domestic remedies

12. The Government argued that the applicant had not exhausted the available domestic remedies. They submitted that he could have lodged a request to have the proceedings reopened under Article 239 § 1 (5) of the CAP (see paragraph 8 above).

13. The Court has repeatedly held that a request for the reopening of a case cannot usually be regarded as an effective remedy within the meaning of Article 35 § 1 of the Convention, but that the situation may be different if it can be established that under domestic law such a request can genuinely be deemed effective (see *Vainio v. Finland* (dec.), no. 62123/09, 3 May 2011, and *Šorgić v. Serbia*, no. 34973/06, § 54, 3 November 2011).

14. The Court reiterates that it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. The availability of any such remedy must be sufficiently certain in law and in practice (see *Selmouni v. France* [GC], no. 25803/94, §§ 75-76, ECHR 1999-V), and the Government's arguments would clearly carry more weight if examples from national case-law had been supplied (see *Doran v. Ireland*, no. 50389/99, § 68, ECHR 2003-X (extracts)).

15. The Government have not provided any examples of domestic court decisions demonstrating that an individual in the applicant's situation would have had a realistic prospect of having his or her case reopened. In particular, unlike the only domestic decision submitted, concerning the reopening of a case that had been found inadmissible because it had been brought after the expiry of the time-limit and in which the applicant had been prevented from submitting his arguments regarding compliance with the legal time-limits (see paragraph 8 above), the applicant in the present case was able to submit his arguments at two levels of jurisdiction in the course of the ordinary proceedings (see paragraphs 3-4 above). The Court is therefore not convinced that the applicant could have reasonably hoped to secure the reopening of the proceedings on those specific grounds.

16. Accordingly, the Court finds that the Government have not discharged their burden of proof by demonstrating that the applicant did not use a remedy that was both effective and available at the relevant time, and the objection regarding non-exhaustion of domestic remedies must therefore be dismissed.

3. Conclusion

17. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

18. The relevant principles concerning the right of access to a court as guaranteed by Article 6 § 1 of the Convention, and, in particular, in situations in which a restriction of that right amounts to "excessive formalism", are summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-79,

5 April 2018). Excessive formalism usually occurs in cases of a particularly strict construction of a procedural rule, preventing an action from being examined on the merits (ibid., § 97).

19. The parties in the present case did not dispute that the starting-point for challenging an administrative act under Article 149 § 1 of the CAP was the date on which the party concerned was notified of it and that the contested orders were published on the Varna Regional Administration's website on the dates of their issuance. The Court further notes that the applicant accessed the orders on the website as soon as they were published and on 4 February 2016 he lodged an application for judicial review of the order with the Regional Governor. The claim was referred to the Varna Administrative Court on 9 February 2016. On the same day, the applicant received the formal notice by post. In those circumstances, the SAC concluded that the claim should not be examined on the merits because it had been brought before the applicant had received formal notice (see paragraph 4 above).

20. While it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of procedural rules, such as time-limits for filing documents or lodging appeals, the Court must nevertheless verify the compatibility with the Convention of the effects of such interpretation, and, in particular, whether it was carried out in a foreseeable and reasonable manner, without constituting a bar to the applicant's effective access to a court (see *Kurşun v. Turkey*, no. 22677/10, § 95, 30 October 2018; and *Supergrav Albania Shpk v. Albania*, no. 20702/18, § 22, 9 May 2023).

21. The Court observes that domestic case-law, although not abundant, supported the examination of claims on the merits even if they had been brought before the formal notice had been delivered to the applicants (see paragraph 7 above). The Court also notes that three of the applicant's other claims against similar orders were considered on the merits despite having been brought before formal notice of the orders had been received (see paragraph 5 above). Therefore, the Court is of the view that the decision of the SAC to reject the applicant's claim as premature lacked clear and consistent precedential support at the material time and was therefore unforeseeable for the applicant.

22. While the Court acknowledges that the rules regarding time-limits are intended to promote legal certainty and the proper administration of justice, it does not see how, in the present case, allowing the applicant's claim as having been lodged within the time-limit would have been incompatible with those aims. The Court observes that the application for judicial review was lodged with the Regional Governor only a few days before the formal notice was delivered, clearly after the applicant had become aware of the orders through their publication on the website, and that the applicant received the formal notice on the same day that his claim was referred to the Varna Administrative Court (see paragraph 2 above).

23. Lastly, the Court attaches significant importance to the fact that the formal notice, as well as the orders themselves, explicitly stated that the orders were subject to judicial review within fourteen days of their publication (see paragraph 2 above). In addition, the Court notes that the orders were published on the Varna Regional Administration's website on the date of their issuance. In those circumstances, while taking into account the Government's argument regarding the applicant's status as a lawyer represented by another lawyer in the domestic proceedings, the Court cannot blame the applicant for acting diligently by submitting his claim immediately after having accessed the orders on the Varna Regional Administration's website.

24. In the light of the above considerations, the Court concludes that the effect of the interpretation of the applicable provisions by the SAC was not carried out in a foreseeable and reasonable manner. There has accordingly been a violation of Article 6 § 1 of the Convention.

25. Having reached this conclusion, the Court considers that it is not necessary to examine what is essentially the same complaint under Article 13 of the Convention (see *Stoyanov and Tabakov v. Bulgaria (no. 2)*, no. 64387/14, § 55, 7 December 2021).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. The applicant claimed 2,000 euros (EUR) in respect of pecuniary damage and the same amount in respect of non-pecuniary damage. He also claimed EUR 2,500 in respect of costs and expenses incurred before the Court.

27. The Government contested those claims.

28. The Court reiterates that under domestic law, the applicant may request the reopening of the civil proceedings in respect of which the Court has found a violation of the Convention and it considers that in the given circumstances this is the most appropriate way for him to obtain compensation for any pecuniary damage he might have sustained. Therefore, there is no call to award the applicant any sum on that account.

29. On the other hand, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

30. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,000 for costs and expenses in the proceedings before it, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into Bulgarian levs, at the rate applicable at the date of settlement:

(i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Peeter Roosma President